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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 JERRY WAYNE SHUE, JR., ) 1:05-CV-00504 AWI JMD HC  
11 Petitioner, ) ORDER DECLINING ISSUANCE OF  
12 v. ) CERTIFICATE OF APPEALABILITY  
13 D. K. SISTO, )  
14 Respondents. )  
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16 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus  
17 pursuant to 28 U.S.C. § 2254.

18 On February 23, 2009, Petitioner filed a motion for a certificate of appealability of the  
19 February 2, 2009, order denying his petition for a writ of habeas corpus. A state prisoner seeking a  
20 writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition,  
21 and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 123 S.Ct. 1029, 1039  
22 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28  
23 U.S.C. § 2253, which provides as follows:

24 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district  
25 judge, the final order shall be subject to review, on appeal, by the court of appeals for  
the circuit in which the proceeding is held.

26 (b) There shall be no right of appeal from a final order in a proceeding to test the  
27 validity of a warrant to remove to another district or place for commitment or trial a  
28 person charged with a criminal offense against the United States, or to test the validity  
of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253.

If a court denies a petitioner’s petition, the court may only issue a certificate of appealability “if jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the petitioner is not required to prove the merits of his case, he must demonstrate “something more than the absence of frivolity or the existence of mere good faith on his . . . part.” Miller-El, 123 S.Ct. at 1040.

In the present case, the Court finds that reasonable jurists would not find the Court’s determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Here, reasonable jurists would not debate this Court’s finding that Petitioner did not prove the basis of his claims, and that the state court’s decision to deny the claims were contrary to clearly established federal law as set forth by the Supreme Court. Accordingly, the Court hereby DENIES Petitioner's motion for certificate of appealability.

IT IS SO ORDERED.

**Dated: April 6, 2009**

**/s/ Anthony W. Ishii**  
**CHIEF UNITED STATES DISTRICT JUDGE**